

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
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FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO on the)	03 MAY -5 AM 10:51
relation of the State Engineer,)	<i>Received May 5, 2003</i>
and THE UNITED STATES OF)	<i>CLERK - SANTA FE</i>
AMERICA,)	
)	
Plaintiffs,)	
)	
v.)	No. CIV 7941-JC
)	RIO CHAMA STREAM SYSTEM
RAMON ARAGON et al.)	
)	Section 5 Rio Gallina
Defendants)	Subfile No. 3-0019

**DEFENDANTS JOSE Z. AND LUCINDA CHACON'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

DEFENDANTS Jose Zebodeo and Lucinda Chacon, by and through their attorney of record, respectfully submit the following proposed findings of fact and conclusions of law:

Proposed Findings of Fact.

1. Jose Zebodeo Chacon and Lucinda Chacon are the owners of the tract of land identified as Subfile No. 3-0019.
2. The Gallina East and West Community Ditch recognizes that five acres of property owned by Zebodeo Chacon in Section 8 of Township 23 N, Range 1 East has been irrigated with water from the Rio Gallina since 1880. *Def. Ex. 23, 24.*
3. Subfile No. 3-0019 covers 1.8 acres, which have been divided into three separate tracts, a 1.4 acre parcel for which the State recognizes water rights, a 0.1 acre parcel situated within the 1.4 acre parcel for which the State does not recognize water rights, and a 0.3 acre parcel situated to the northwest of the 1.4 acre parcel. *State Ex. 19.*
4. Jose Zebodeo Chacon irrigates the entirety of the 1.8 acres. *Tr. 2/6/03 at 5.*

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5. The entire 1.8 acre parcel, including the 0.3 acre and 0.1 acre portions, is planted in grass hay and is harvested for grass hay. *Tr. 2/6/03 at 7, 63..*
6. Rose bushes naturally occur within the 0.1 acre parcel. *Tr. 2/6/03, Chacon at 6.*
7. Willows, also known as *jaras*, naturally occur within the 0.3 acre parcel. *Tr. 2/6/03 at 6, 14.*
8. In northern New Mexico, willows encroach on irrigated land. *Tr. 2/6/03 at 56, 63.*
9. When Mr. Chacon harvests the grass hay, he cuts the willows and the rosebushes and mixes them with the grass hay for livestock feed. *Tr. 2/6/03 at 7.*
10. Through time, the willows have had to be cut periodically to keep the field clear. When it appears that the irrigation season is going to be dry, Mr. Chacon does not cut the willows that year. *Tr. 2/6/03 at 8-9.*
11. It is possible to cut willows that have grown to have a diameter of one-half (1/2) inch thick. *Tr. 2/6/03 at 22.*
12. In northern New Mexico, it is common for irrigators to take action to deal with encroaching willows. *Tr. 2/6/03 at 56, 63.*
13. The land underlying Subfile No. 3-0019 is situated such that irrigation water runs from the eastern portion, which is higher, downslope, to the western portion. *Tr. 2/6/03 at 21.*
14. The topography of Subfile No. 3-0019 is such that the 0.1 acre parcel and the 0.3 acre parcel are irrigated whenever there is water to irrigate. *Tr. 2/6/03 at 9.*
15. The 0.3 acre parcel is located several feet up from the river and receives water from irrigation from the Placitas Ditch. *Tr. 2/6/03 at 11*
16. The area of rosebushes growing in the 0.1 changed between the State's field visits, and was larger in 2001 than it was in 2002. *Tr. 2/6/03 at 17.*

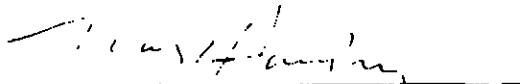
17. A ditch runs through the 0.1 acre parcel. *Tr. 2/6/03 at 20, 40, 60, State Ex. 19 as marked at trial.*
18. Small laterals can irrigate the 0.3 acre tract. *Tr. 2/6/03 at 40, 62, State Ex. 19 as marked at trial.*
19. State Engineer field personnel made two site visits to the area on July 12 and on September 26, in 1960 and on each visit, they classified the 0.1 acre tract as having been planted in hay, but appear to have omitted the 0.3 acre tract both times. *Tr. 2/6/03 at 29, 32-33; State Ex. 15.*
20. Through time, the density and the extent of growth in both the 0.1 acre tract and the 0.3 acre tract has changed. For instance, the 1989 aerial photograph shows that the 0.3 acre tract has much less vegetation than it did in 1963, and the density of brush in the 1981 aerial photograph appears to be different than in other years, *Def. Ex. 16, 26, 27, 28, 29; State Ex. 17, Tr. 2/6/03 at 43, 54.*
21. Irrigated pasture grass grows continuously throughout both the 0.1 tract and the 0.3 acre tract. *Tr. 2/6/03 at 41, 47, 55, 62.*
22. Mr. Chacon has historically diverted water from the Rio Gallinas with a manmade diversion, and intends to use and does use the water for the production of livestock forage and feed on the entirety of Subfile No. 3-0019 to the maximum extent possible.

Proposed Conclusions of Law.

1. Beneficial use is the basis, measure and limit of the right to use water. N.M. Const. Art. XVI, Sec. 4.
2. Beneficial use is the use of such water as may be necessary for some useful and beneficial purpose in connection with the land from which it is taken. Erickson v. McLean, 62 N.M. 264 308 P.2d 983 (1957).

3. An appropriation of water is perfected by the taking or diversion of water from a natural stream or other source of water supply, with the intent to apply it to some beneficial use of purpose. Harkey v. Smith, 31 N.M. 521, 247 P. 550 (1926).
4. Cultivation of crops is a beneficial use of water. State ex rel. Martinez v. McDermett, 120 N.M. 327, 901 P.2d 745 (1995).
5. Water for the cultivation and harvesting of introduced pasture grasses is a beneficial use of water.
6. The entirety of Subfile No. 3-0019 has valid water rights, including the 0.1 acre and 0.3 acre parcels.

Respectfully submitted,


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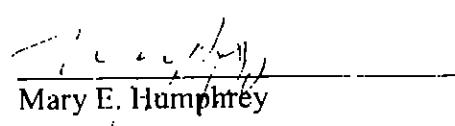
CERTIFICATE OF SERVICE

I certify that a copy of this pleading was mailed to the following persons on the 2nd day of May, 2003.

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